

Korea's Shifting Tech Policy Raises U.S. Concerns

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Recent developments in South Korea's antitrust policy and leadership are puzzling, especially given the Trump administration's focus on competition and innovation and concern regarding Korean policy. Korea's moves continue to create friction between the U.S. and Korea and will likely stifle innovation in a crucial new era of AI-driven growth. Two recent events are at the heart of this shift: a letter from the Korea Fair Trade Commission (KFTC) to the U.S. House of Representatives Judiciary Committee regarding Congressional concern of Korean targeting of U.S. innovative firms, and the appointment of a new KFTC chair from outside the traditional antitrust community.

The KFTC's reply letter to the House Judiciary Committee states that creating a fair and innovative platform market is a top priority. However, this raises questions. Korea's tech sector is already highly competitive, with a diverse mix of Korean, U.S., and increasingly Chinese companies driving innovation in areas like food delivery, fintech, e-commerce, and social media. The growth of Chinese firms in Korea, in itself, creates tensions both in Korea and with the Trump administration. Ironically, these tensions would be exacerbated by Korea's proposed changes to its competition laws in the digital space.

The letter's emphasis on "fairness" over traditional competitive concerns is particularly worrisome. Antitrust law is designed to address issues like exclusion and collusion that harm competition and impact prices and quality—not to solve every societal problem where fairness might be a concern. Rather, the KFTC seems to be using antitrust law in ways that do not seem to promote consumers and innovation. This too is a concern for a Trump administration that does not want antitrust to be weaponized against U.S. companies because of a veneer of fairness concerns.

The letter also makes an untrue claim regarding a global consensus on regulating platforms. The U.S. has repeatedly rejected an ex-ante regulatory approach, and many other countries, including India, Canada, and Mexico, have not adopted one either. These countries have used traditional and effective enforcement tools against tech companies without a push for broader ex-ante (or similar) regulation. Traditional U.S. antitrust enforcement has proven successful in addressing potential anticompetitive behavior, demonstrating that a heavy-handed regulatory system is only necessary when existing enforcement tools fail.

The most prominent example of a misguided regulatory approach, Europe's Digital Markets Act (DMA), has drawn criticism for its high compliance costs and intrusive interventions, without producing the "European champions" its proponents hoped the law would enable. In fact, critiques of European lack of competitiveness such as the EU's own Draghi Report suggest these regulatory interventions have further sidelined Europe from global technological leadership. The DMA experience should be a cautionary tale in Korea. Even if the regulatory criteria is "non-discriminatory", as Korean officials often argue about their proposed Online Platform Monopoly Act, modeled after the DMA, the effect is still actionable discrimination against U.S. companies given the disproportionate burden being placed on one set of market participants. Indeed, the political pressure to target foreign firms in Korea is well known, with U.S. companies regularly

subjected to disproportionate enforcement action, subpoenas before the National Assembly, and public pressure from rivals.

The newly appointed KFTC Chair, Biung-Ghi Ju, has indicated he will pursue an aggressive strategy. He has suggested that if there is no legislation for an antitrust regulatory approach, the KFTC should use its administrative power to go after platforms based on their “superior bargaining position.” This approach, known as Abuse of Superior Bargaining Position (ASPB), already underway but with more emphasis, is a concerning shift. Blatantly targeting U.S. companies in his speech also raises concern for the same Trump administration accusing Korea of bad faith in targeting U.S. tech companies. In fact, ASPB was originally intended to address the power of traditional conglomerates, not the dynamic and innovative world of digital markets, which are characterized by new entry, product differentiation, and competition. Relying on ASPB may chill innovation and investment in Korea by punishing successful companies based on their size rather than on any proven anticompetitive behavior. The closest parallel in the U.S. to ASPB is the Robinson-Patman Act, which is widely seen by economists and policymakers as an economic failure. Since proposed Korean platform legislation is currently on hold, this new focus on ASPB seems like a backdoor attempt to achieve the same regulatory outcomes without legislative approval. Ironically, if Professor Ju were truly concerned with “unfairness,” he could focus on traditional issues like collusion and regulatory barriers in key sectors of the Korean economy, such as infrastructure, food, and energy.

These moves against the tech sector are particularly surprising given the weak state of Korean venture capital. Both venture capital deals and total investment have been declining for the past two years, with early-stage deals dropping nearly 43% in the last year alone. This suggests a market already wary of Korea's attempts to restructure its tech sector through regulatory intervention.

This new direction is also a direct contradiction of President Trump’s focus on confronting China in the AI race and his administration's concern over discriminatory regulatory burdens on U.S. tech companies. By adopting policies that disproportionately target American firms, South Korea risks antagonizing a key ally and creating a vacuum that Chinese competitors are poised to exploit. Whether intentional or not, Korea's policy risks creating an uneven playing field that could ultimately benefit its main rival.

Instead of embracing a flawed, protectionist framework, South Korea should strengthen its partnership with the U.S. to build a shared technological future. This means relying on traditional antitrust enforcement when there is a clear theory of economic harm, supported by strong evidence, and with respect for due process. The path forward for Korea is through collaboration and open markets, not regulatory conflict that could stifle investment and innovation at a critical time.